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7 THE REGENTS OF THE
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8
9 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 BRANDI BROOKS,) CASE NO. C07-2662 (BZ)
11 Plaintiff,)
12 vs.) DEFENDANT THE REGENTS'
13 BOARD OF REGENTS OF THE UNIVERSITY OF) MOTION TO DISMISS FIRST
CALIFORNIA,) AMENDED COMPLAINT, FRCP
14 Defendant.) 12(b)(1)(6)
15) Date: September 19, 2007
16) Courtroom: G, 15th Floor
17) Time: 10:00 a.m.
18) Judge: Hon. Bernard Zimmerman

19 TO PLAINTIFF AND HER ATTORNEY OF RECORD:

20 PLEASE TAKE NOTICE that on September 19, 2007, at 10:00 a.m., or as soon
21 thereafter as the matter may be heard, in Courtroom G of the above-entitled court, Defendant
22 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA will and hereby does move the
23 Court to dismiss plaintiff's claims for failure to state a claim upon which relief may be granted.

24 Plaintiff's causes of action for violation of 42 U.S.C. 1981 and the California Fair
25 Employment and Housing Act ("FEHA") are barred on the ground of sovereign immunity under
26 the Eleventh Amendment.

27 This Motion is based on this Notice of Motion, the accompanying Memorandum of
28 Points and Authorities, and the pleadings and papers filed herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff BRANDI BROOKS is a former Licensing Assistant in the Office of Technology Transfer of Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“The Regents”). She claims that she was discriminated against during her employment based on her race and sex, and retaliated against for protesting alleged violations of California Fair Employment and Housing Act. The Regents enjoy sovereign immunity from these claims under the Eleventh Amendment, and therefore they must be dismissed.

II. FACTS ALLEGED IN THE FIRST AMENDED COMPLAINT

Plaintiff was employed as a Licensing Assistant in the Office of Technology Transfer beginning in December 2000. First Amended Complaint, ¶ 3. She alleges that she was “subjected to egregious, unlawful, discriminatory employment practices culminating in the termination of her employment on or about October 3, 2005, without cause or provocation.” *Id.* at ¶ 5.

III. PROCEDURAL POSTURE

Plaintiff filed her original Complaint in this Court on May 18, 2007, alleging two causes of action: (1) discrimination under 42 U.S.C. § 1981 of the Civil Rights Act of 1866; and (2) discrimination based on race and sex, and retaliation in violation of the California Fair Employment and Housing Act (“FEHA”). Plaintiff subsequently filed a First Amended Complaint on July 12, 2007. The First Amended Complaint added no new facts, allegations or causes of action, but simply separated plaintiff second cause of action into three distinct claims.

IV. ARGUMENT

Under the Eleventh Amendment to the United States Constitution, an unconsenting State is immune from suits brought in federal courts by its own citizens as well as by citizens of another state. *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). “[T]he University of California and the Board of Regents are considered to be instrumentalities of the state for purposes of the

¹ Eleventh Amendment.” *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir.1982); *accord* ² *Regents of the University of California v. John Doe*, 519 U.S. 425 (1997).

3 Although Congress may abrogate the states' immunity from suit under federal statutes,
4 (see *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 55 (1996)), this Court has held that there
5 has been no abrogation of Eleventh Amendment immunity with respect to Section 1981.
6 *Carmen v. San Francisco Unified School Dist.*, 982 F.Supp. 1396, 1402 (N.D.Cal. 1997). In
7 addition, "California has not waived its immunity to FEHA actions in federal court." *Freeman v.*
8 *Oakland Unified School Dist.*, 179 F.3d 846, 847 (9th Cir. 1999).

V. CONCLUSION

10 Accordingly, The Regents is immune from all of the causes of action asserted herein and
11 defendant's motion should be granted and plaintiff's lawsuit dismissed in its entirety.

12 | Dated: August 30, 2007

GORDON & REES, LLP

By: MICHAEL A. LAURENSEN
Attorneys for Defendant
THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

1 PROOF OF SERVICE

2 I am a resident of the State of California, over the age of eighteen years, and not a party
3 to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite
2000, San Francisco, CA 94111. On July 31, 2007, I served the within documents:

4 DEFENDANT THE REGENTS' MOTION TO DISMISS FIRST AMENDED
5 COMPLAINT, FRCP 12(b)(1)(6)

6 by transmitting via facsimile the document(s) listed above to the fax number(s) set
7 forth below on this date before 5:00 p.m.

8 by personally delivering the document(s) listed above to the person(s) at the
9 address(es) set forth below.

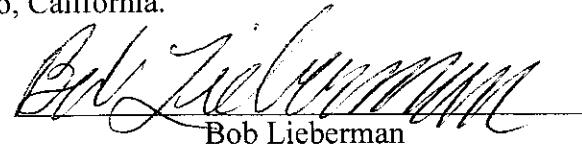
10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in United States mail in the State of California at San Francisco,
12 addressed as set forth below.

13 Curtis G. Oler
14 Law Offices of Curtis G. Oler
15 P.O. Box 15083
16 San Francisco, CA 94115

17 I am readily familiar with the firm's practice of collection and processing correspondence
18 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
19 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
20 motion of the party served, service is presumed invalid if postal cancellation date or postage
21 meter date is more than one day after the date of deposit for mailing in affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed on July 31, 2007, at San Francisco, California.

25 
26 Bob Lieberman